

REMARKS/ARGUMENTS

The amendments above and remarks below are in response to a final Office Action mailed on October 14, 2005 in the above-listed patent application. In the Office Action, the drawings were objected to for having reference numerals not described in the specification. Also, the specification was objected to in selected areas. Further, all of the pending Claims 1, 3-8, 10-24, 37 and 39-42 were rejected under 35 U.S.C. §§102 and 103.

The drawings were objected to for lacking the reference sign 100. The reference sign 100 refers to the lumen measuring device and has been added to various figures and submitted for approval.

Claims 6, 13 and 42 were objected to for informal reasons and have been amended to recite “a first and second location,” as requested by the Examiner. Therefore the objections have been overcome.

Claims 1-3, 6-8, 10, 13, 37, 39 and 42 were rejected under 35 U.S.C. §102(e) over U.S. Patent No. 6,427,351 to Matthews et al. (“Matthews”). Claims 1-4, 6-8, 10, 11, 13-23, 37, 39 and 42 were rejected under 35 U.S.C. §102(b) over U.S. Patent No. 5,010,892 to Colvin et al. (“Colvin”). Claims 5, 12, 24, 40 and 41 were rejected under 35 U.S.C. §103(a) over Colvin in combination with U.S. Patent No. 5,919,147 to Jain (“Jain”). In the previous response Matthews, Colvin and Jain were differentiated based on their failure to teach or suggest, alone or in combination, a measurement assembly having legs with distal ends having inward facing surfaces configured to be substantially flush.

In the Office Action, the Examiner remarked that the claim language does not specify what portion of the inward facing surfaces are substantially flush with each other. “[T]he claim language does not specify what portion of the inward facing surfaces are substantially flush with each other in the closed position. The claims do not limit the flush arrangement to be at the distal ends of the legs or along the entirety of the inward facing surfaces. Therefore, at least the inward facing portions of the proximal ends of the legs in the measurement assemblies of Matthews, Colvin and Jain can all be said to be substantially flush with each other in the closed configuration.” See, the Office Action, pages 7 and 8. In addition, the Examiner cited a

dictionary definition of flush as meaning “arranged with adjacent sides, surfaces, or edges close together.” See, the Office Action, page 9.

In a telephone conference with the Examiner on January 11, 2006, applicant’s attorney proposed amending Claims 1, 7, 24 and 37 to better describe the flush arrangement of the legs. Each of Claims 1, 7, 24 and 37 have been amended to recite that the inward facing surfaces of the legs are in flush contact with one another along at least a portion of the inward facing surfaces distal of the proximal ends of the legs. This clarifies that the flush surfaces are in contact and not just “close together” as described by the dictionary definition cited in the Office Action. In addition, this amendment clarifies that the inward facing surfaces that are in flush contact include at least a portion distal of the proximal ends of the legs. Matthews, Colvin and Jain, alone and in combination, do not disclose or suggest that there is flush contact of the measurement legs distal of the proximal ends.

It was also alleged in the Office Action that each of Matthews, Colvin and Jain teach a closed configuration of each apparatus where the measurement assembly is fully disposed within the exterior conduit “where each apparatus appears equally capable of allowing the distal end of the legs of the respective measurement assemblies to pass through a narrowed portion of the lumen. . . . Moreover, the Examiner respectfully submits that should an operator select an exterior conduit of sufficiently small diameter for use in the respective apparatus of each of Matthews, Colvin and Jain, the inward facing surfaces of the legs of the measurement assemblies of each apparatus would be capable of being compressed to the extent that they are substantially flush with each other along the lengths thereof.” See, the Office Action, page 9.

Applicant respectfully disagrees. Applicant could find nothing in Matthews, Colvin or Jain, or the remaining cited references, that teaches or suggests that a smaller exterior conduit should be used to somehow compress the legs of the measurement assemblies. Even if such a suggestion were found, none of these references appears to teach or suggest that the legs would be shaped, constructed of appropriate materials or otherwise configured to effectively (e.g., without jamming or permanent deformation) assume the flush contact recited in each of Claims 1, 7, 24 and 37 of the present application.

Appl. No.: 10/618,223
Filed: 07/11/2003
Amdt. dated 01/17/2006

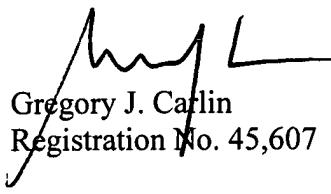
The remaining rejected Claims 3-6, 8, 10-23 and 39-42 depend from and further patentably distinguish one of independent Claims 1, 7, 24 and 37. The rejections of Claims 1, 3-8, 10-24, 37 and 39-42 under 35 U.S.C. §§102 and 103 have therefore been overcome.

New Claim 43 has been added and depends from, and further patentably distinguishes, independent Claim 1. Claim 43 should therefore also be allowable over the cited references.

In view of the remarks and amendments presented above, it is respectfully submitted that Claims 1, 3-8, 10-24, 37 and 39-43 of the present application are in condition for allowance. It is respectfully requested that a Notice of Allowance be issued in due course. The Examiner is requested to contact Applicants' undersigned attorney to resolve any remaining issues in order to expedite examination of the present application.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

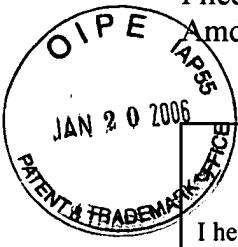
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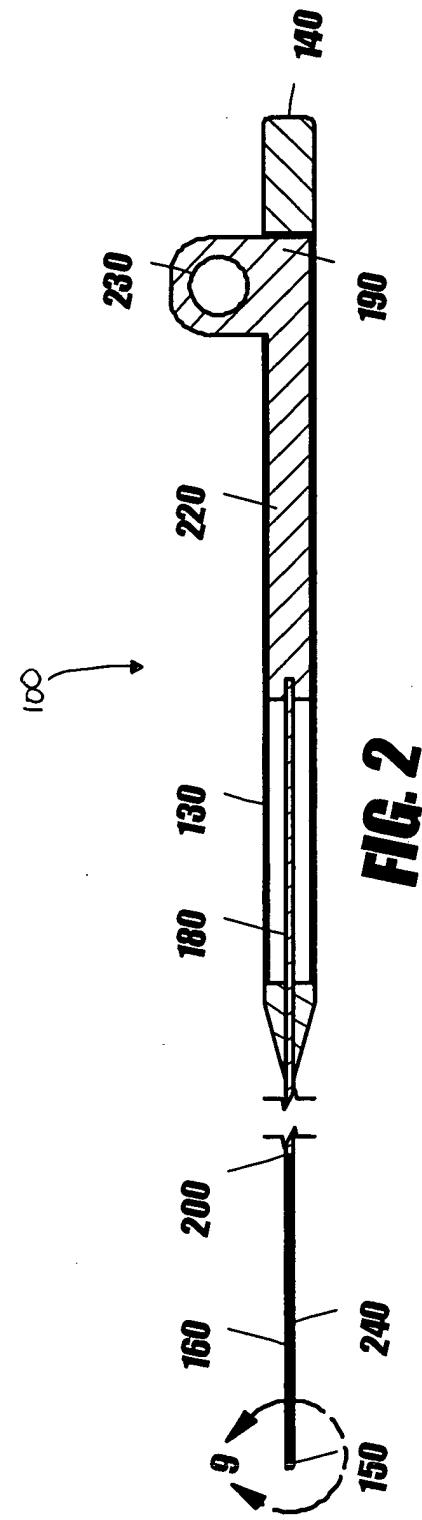
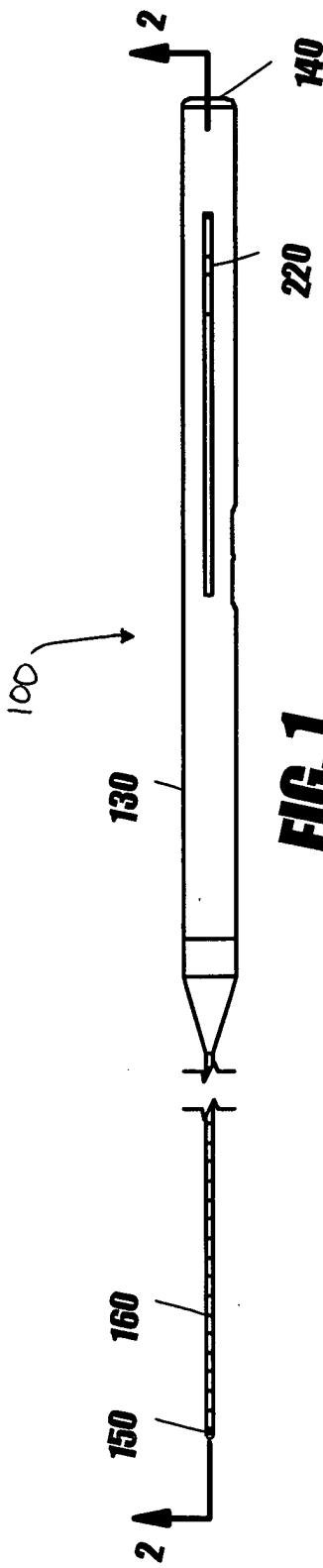
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to:
Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on January 17, 2006.

Lisa Rohe

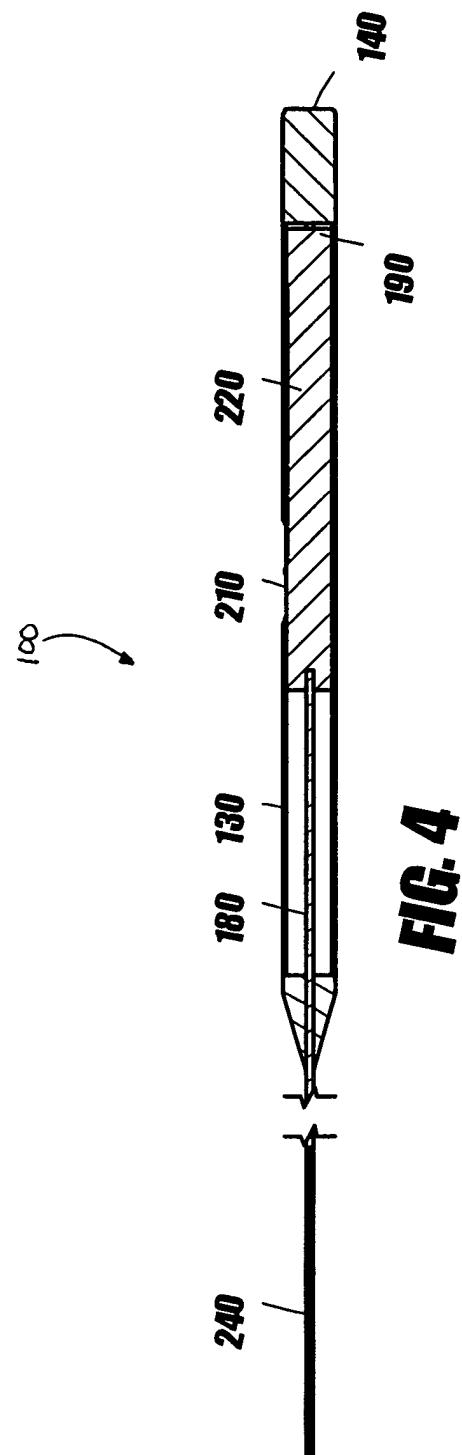
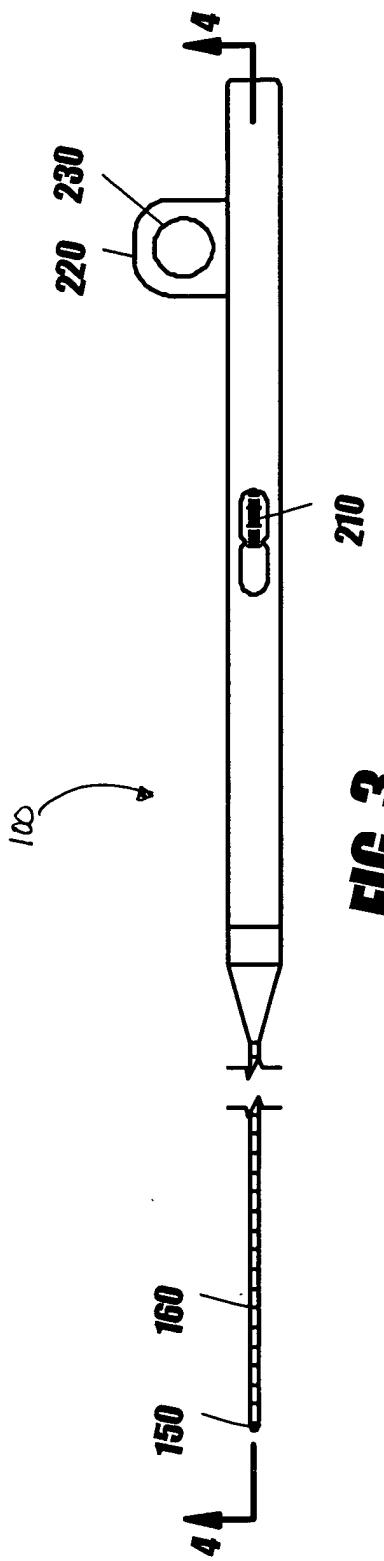
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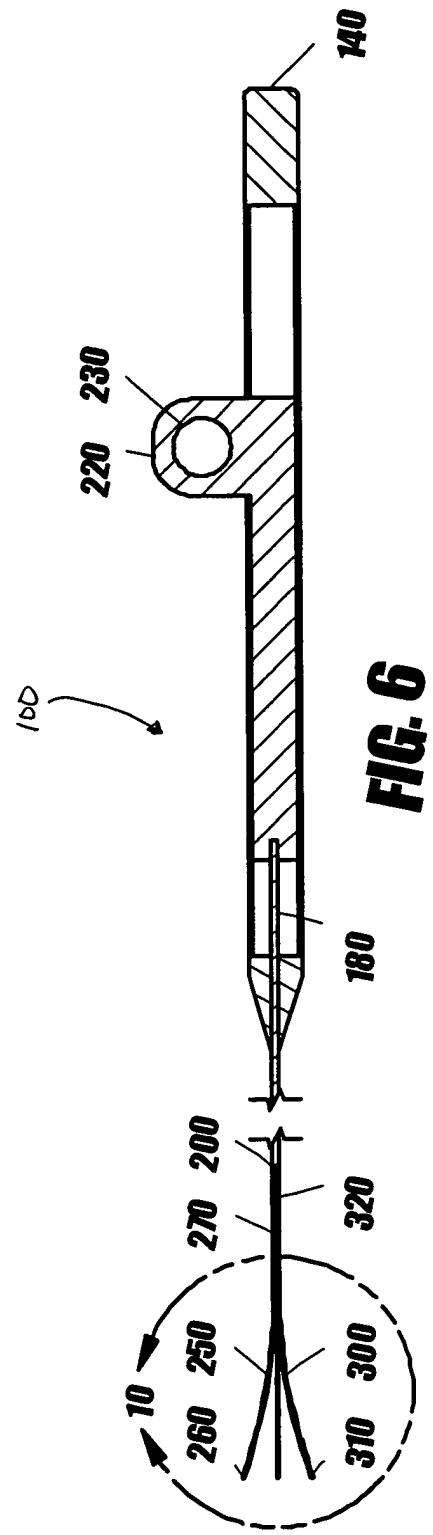
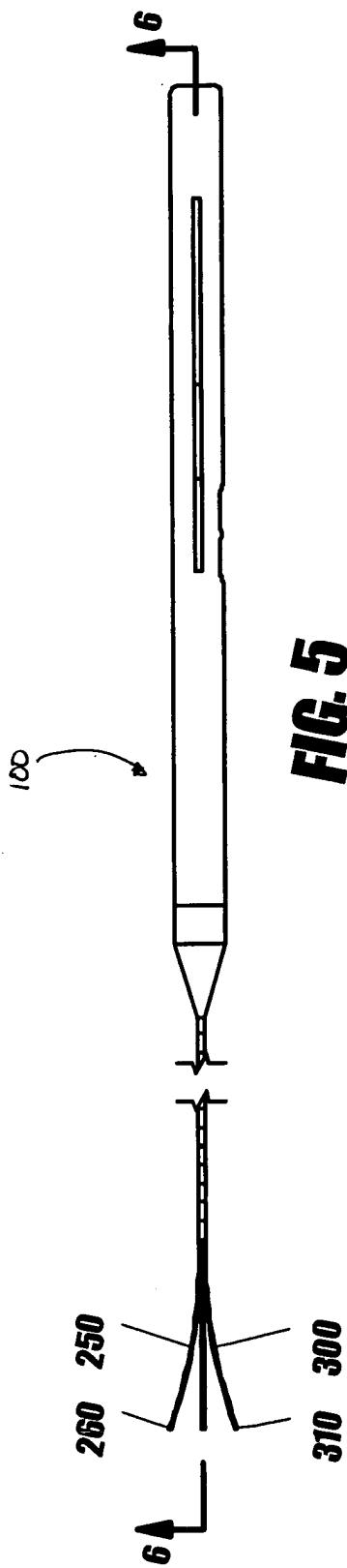
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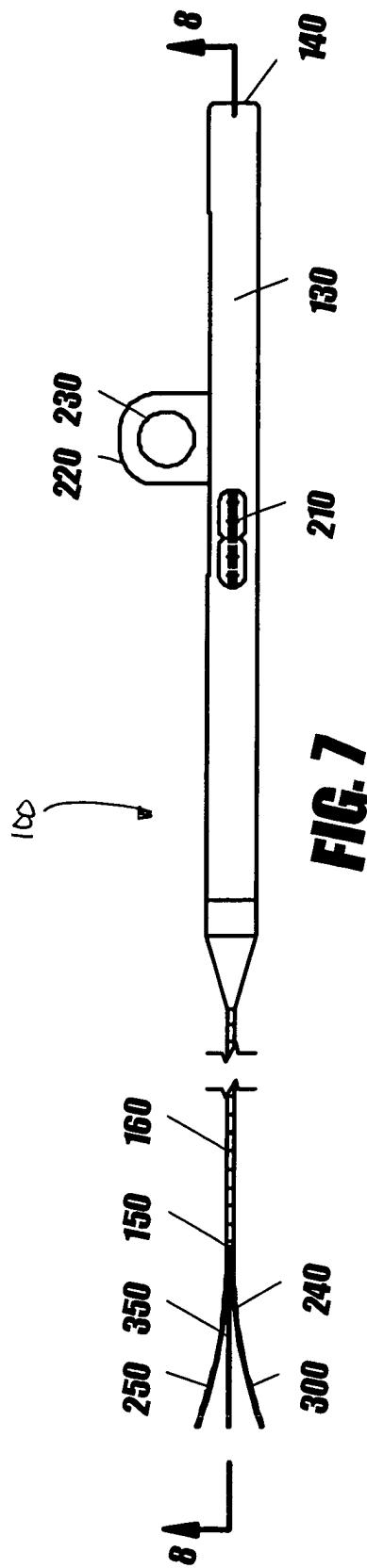


FIG. 7

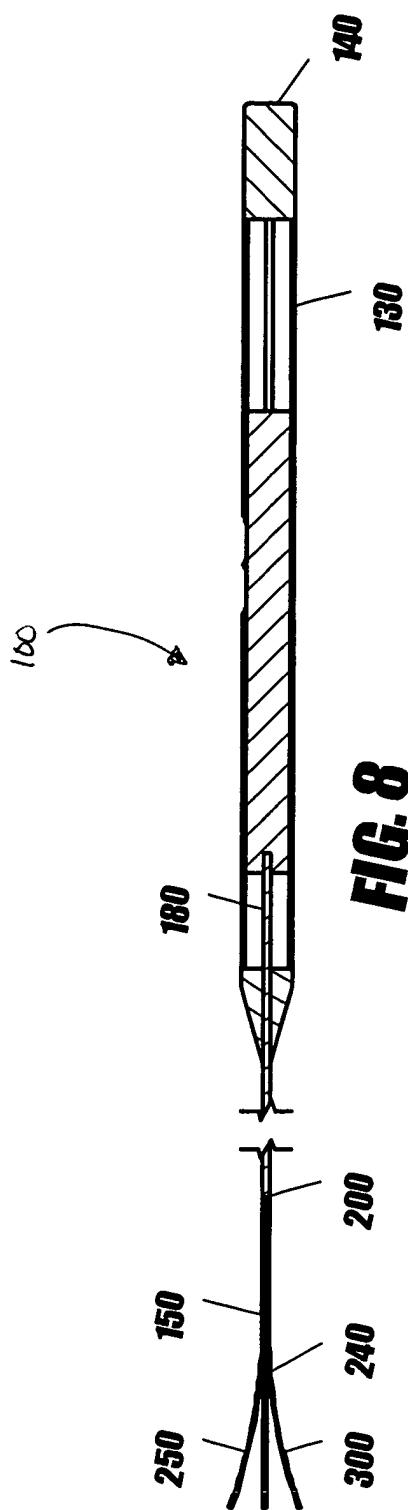


FIG. 8

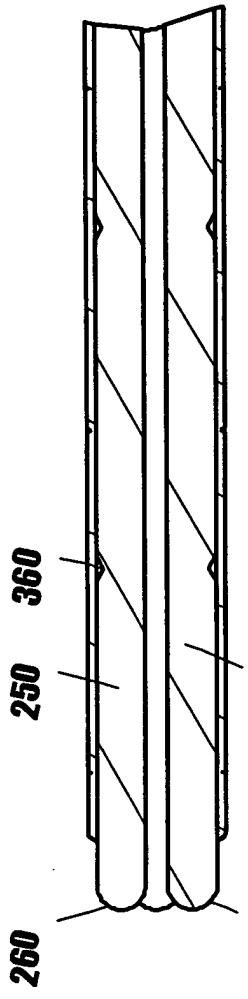


FIG. 9

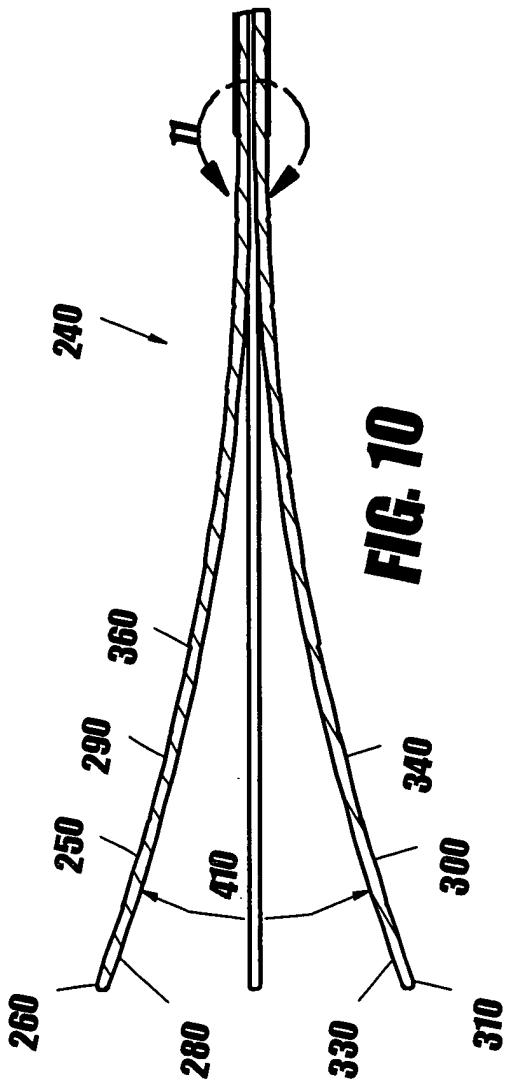
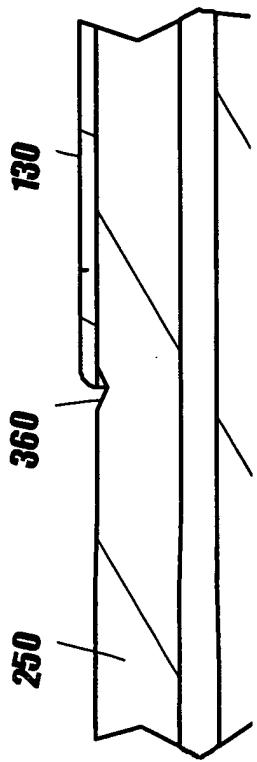


FIG. 10



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FIG. 13

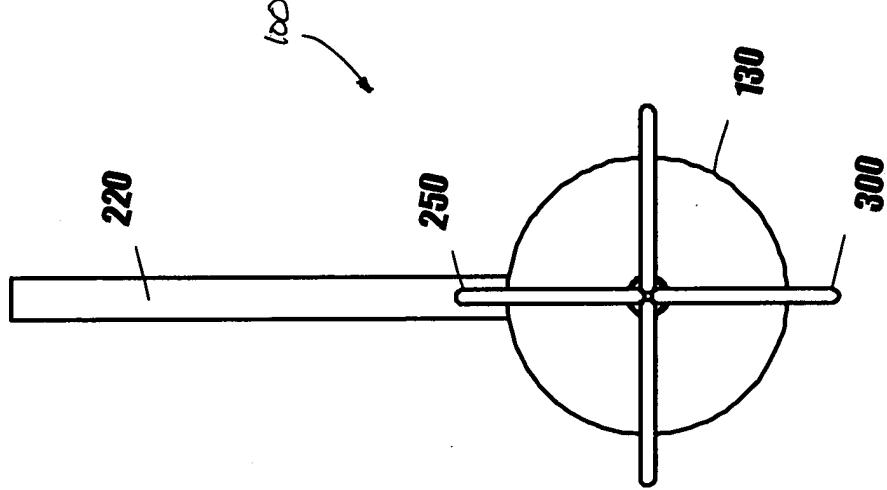
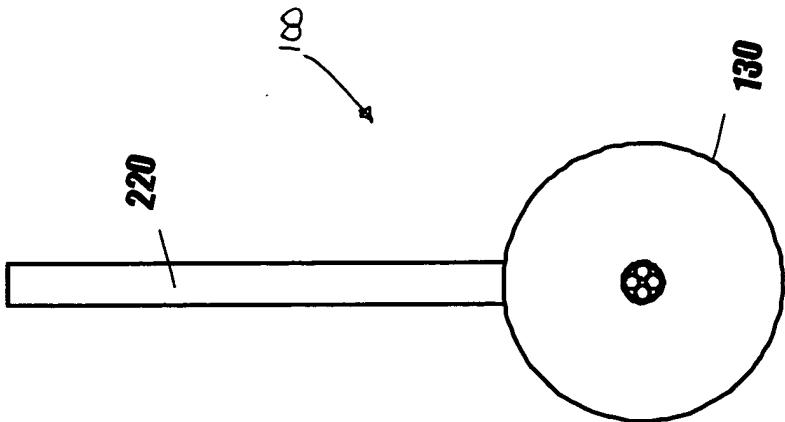
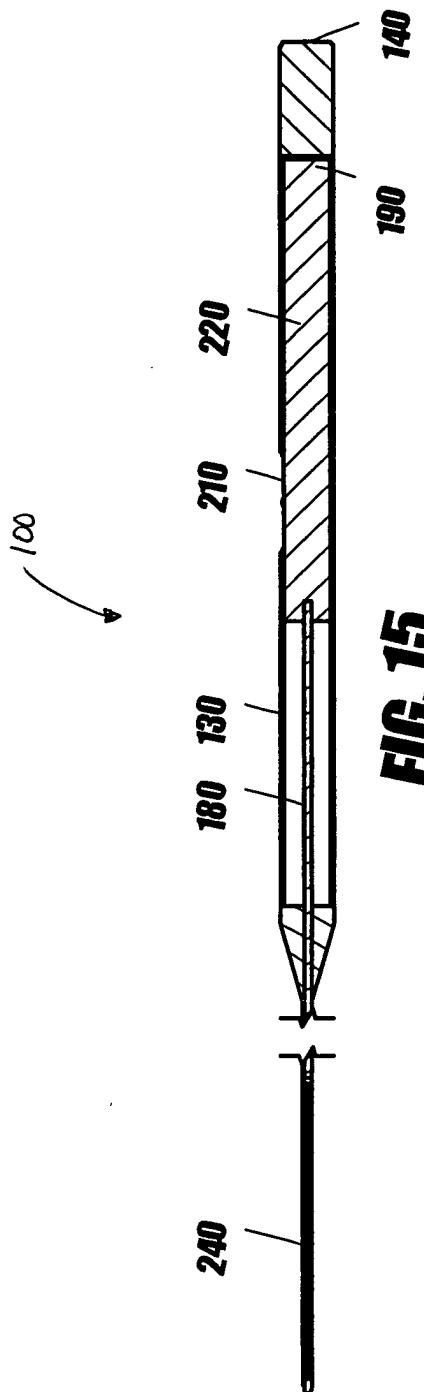
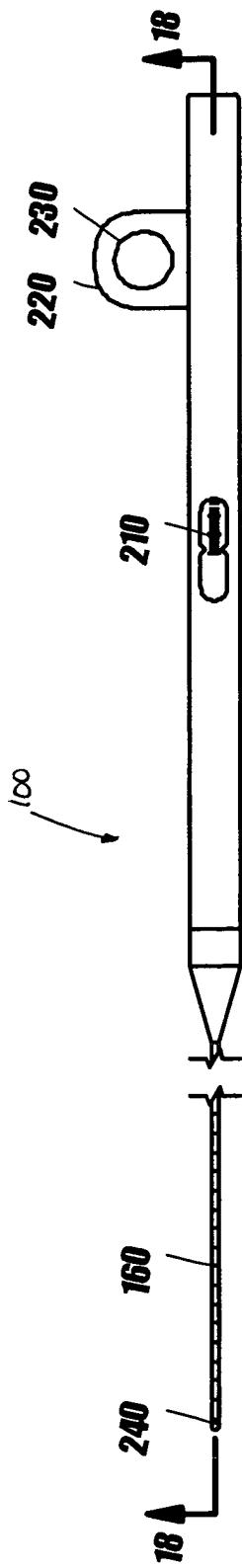


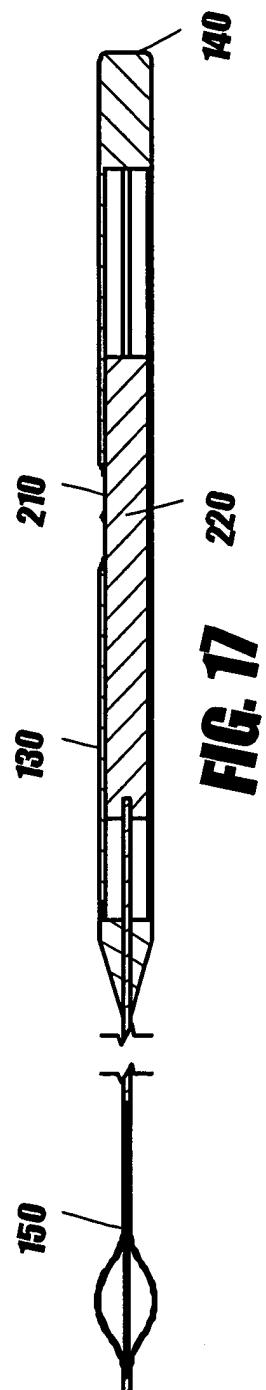
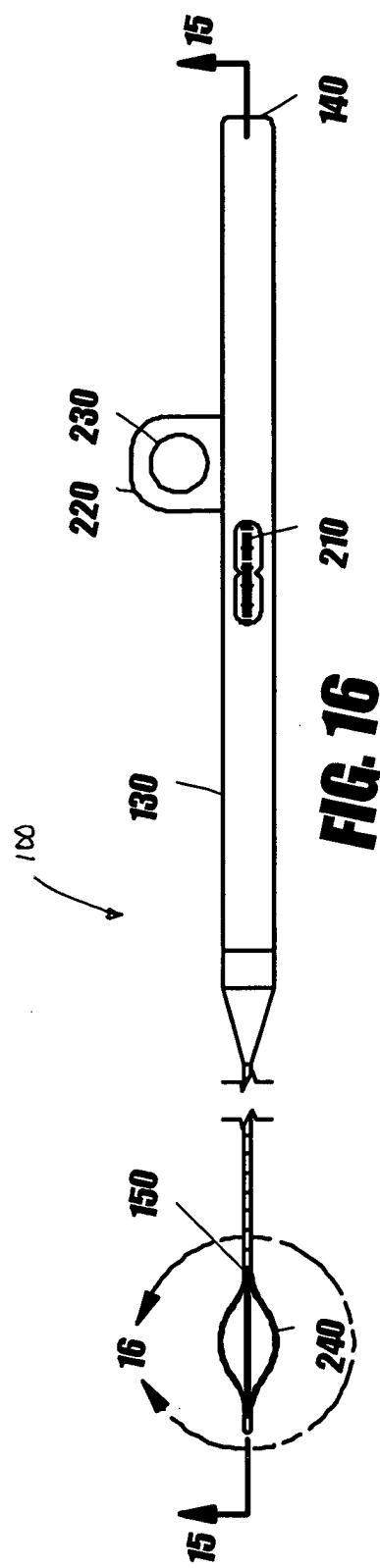
FIG. 12



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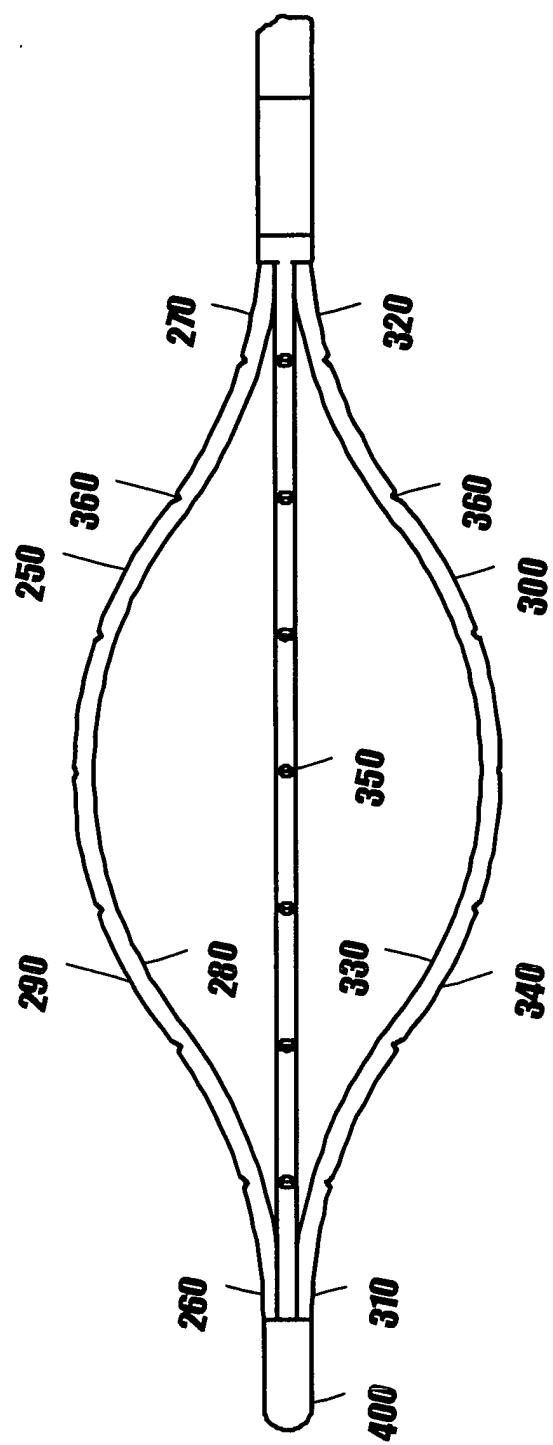


FIG. 18

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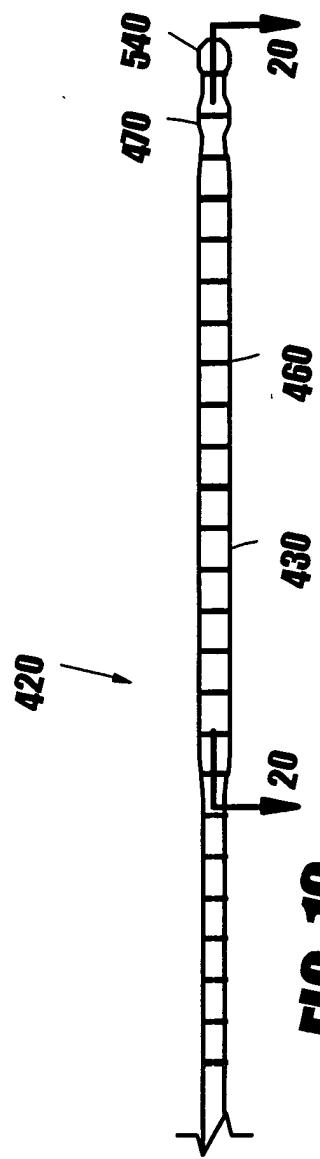


FIG. 19

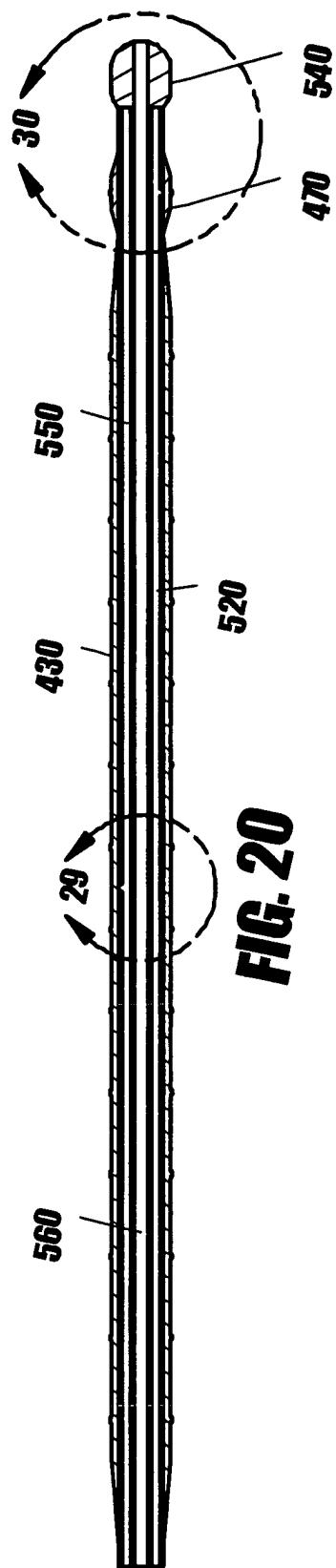
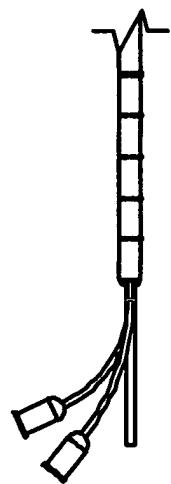


FIG. 20

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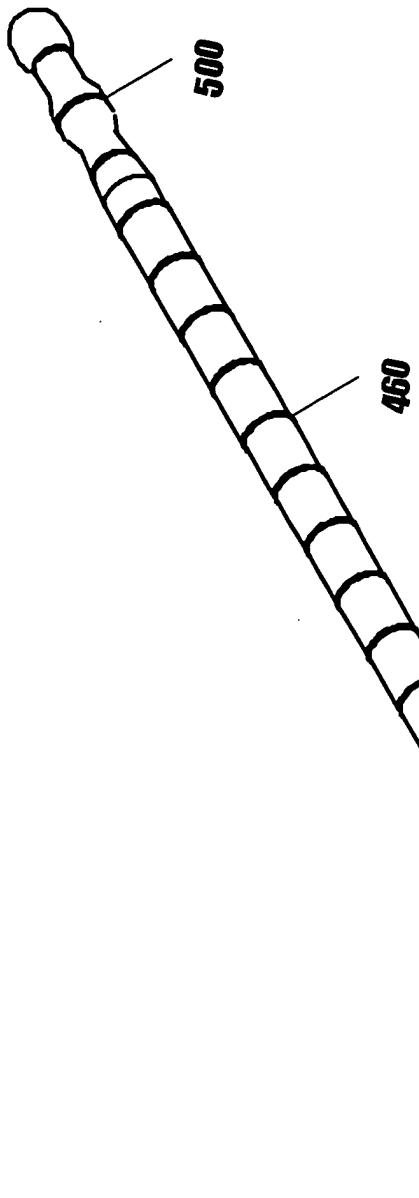


FIG. 21

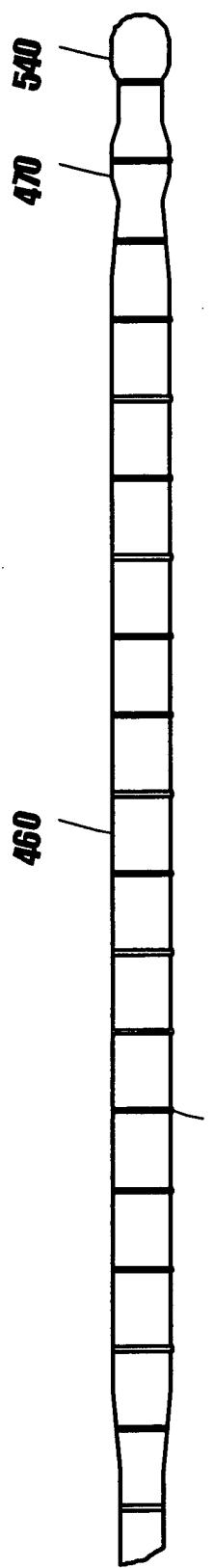


FIG. 22

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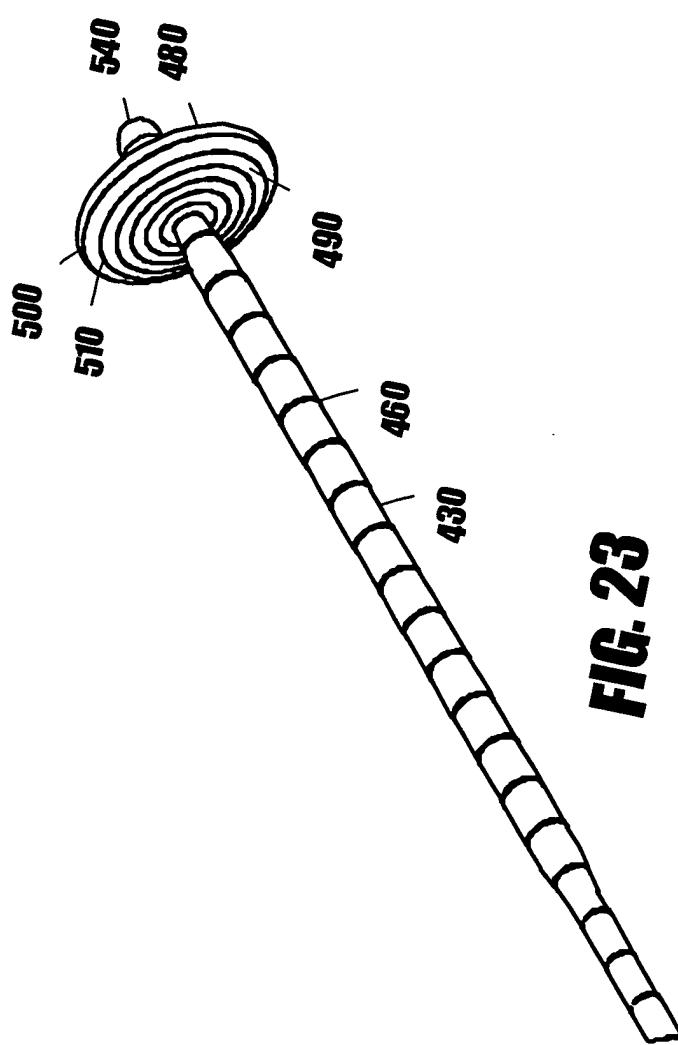


FIG. 23

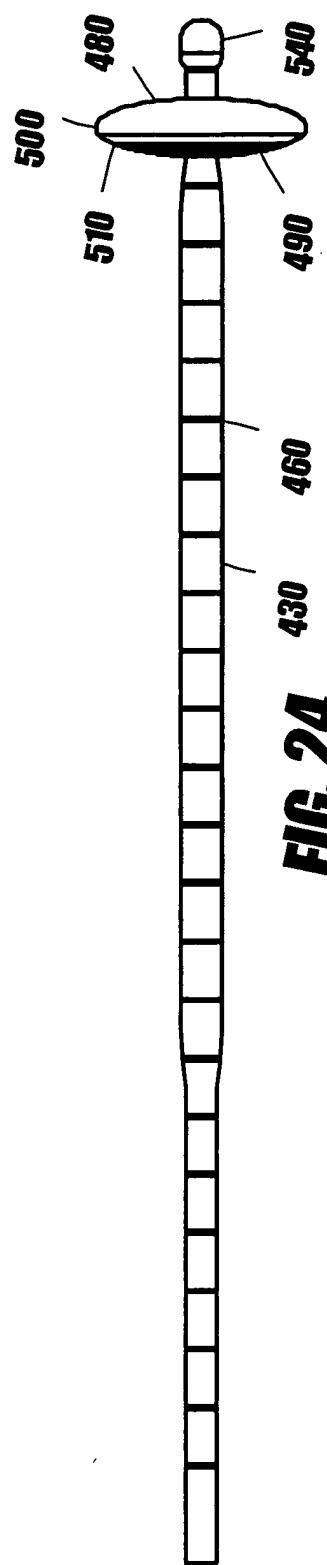
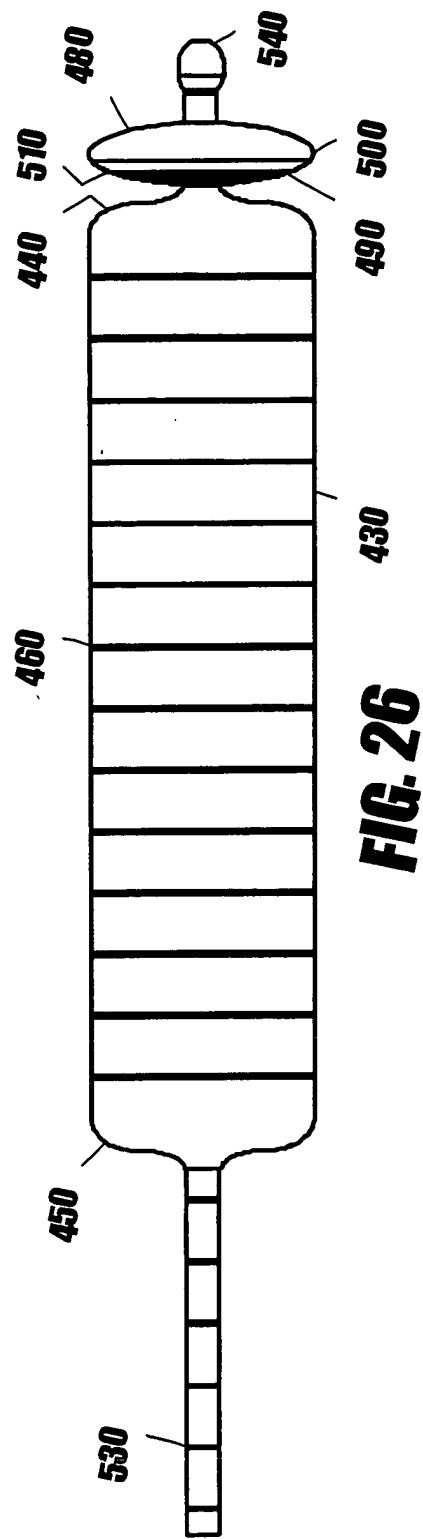
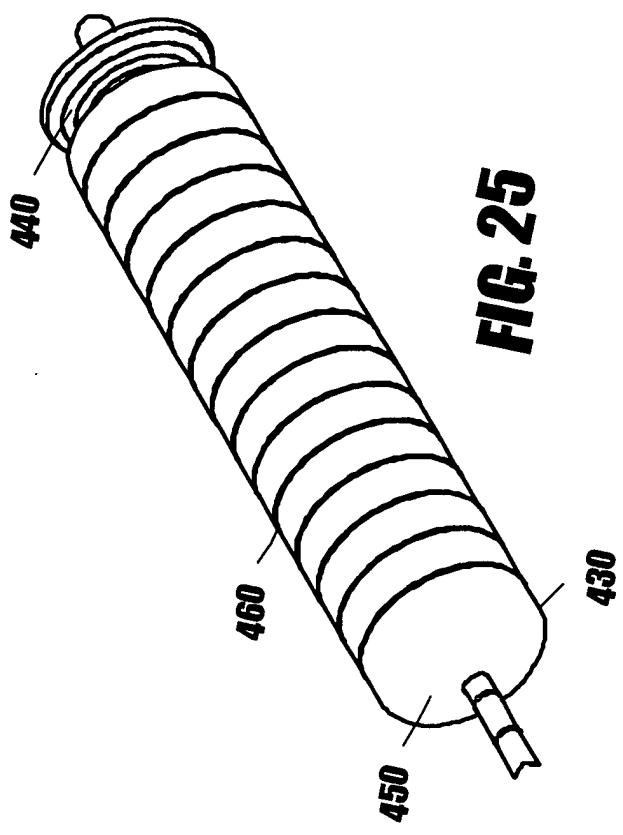
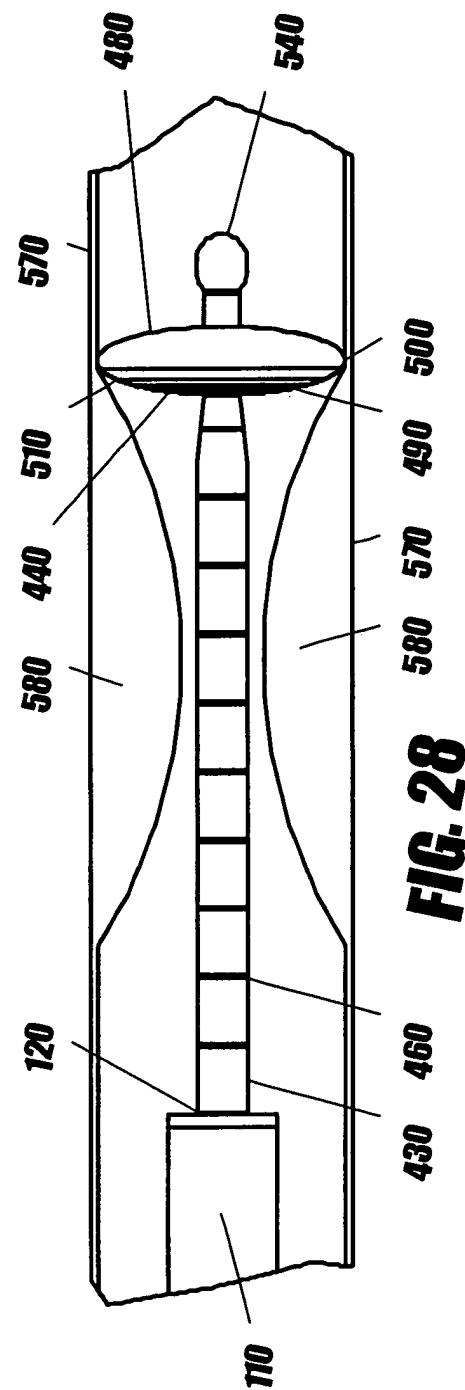
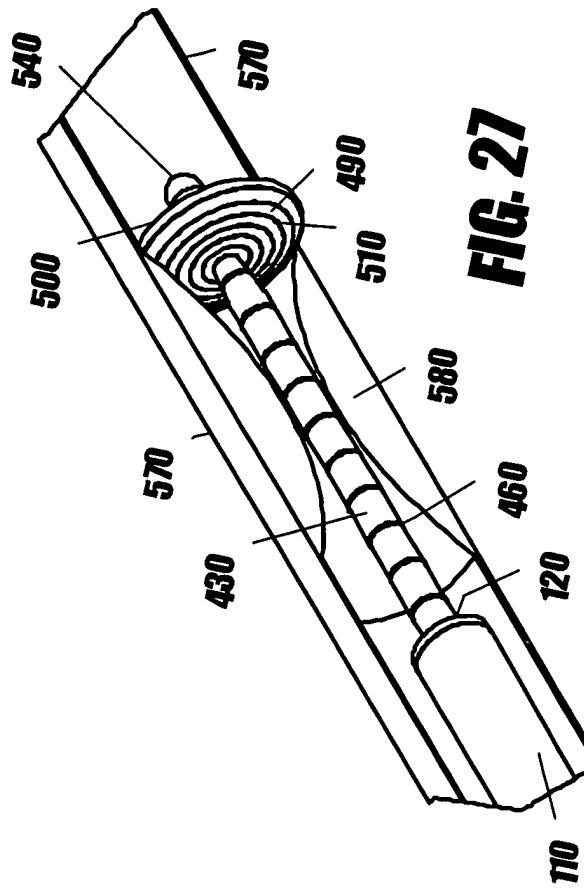


FIG. 24

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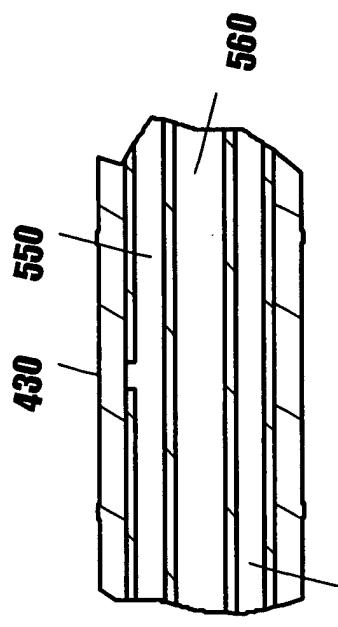


FIG. 29

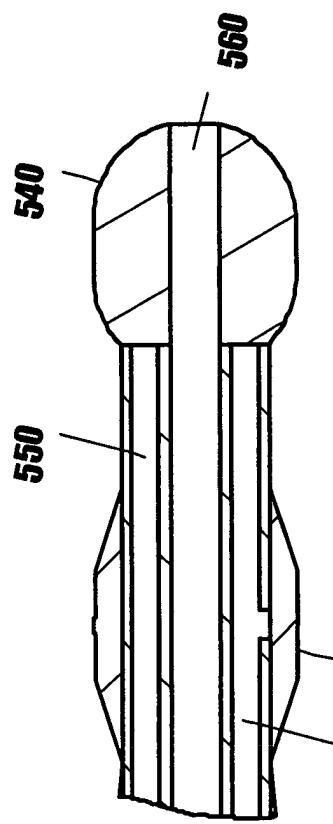


FIG. 30